

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ADRIENNE GILANIAN,
Plaintiff,

v.

CITY OF BOSTON, SUFFOLK
COUNTY, RICHARD J. ROUSE,
Sheriff, and two presently unknown
Suffolk County corrections officers:
MARY POE and JANE DOE,
Defendants.

Civil Action No. 01-CV-11580-NG

DEFENDANTS' MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12 (B)(6)

NOW COME the Defendants Suffolk County and Sheriff Richard J. Rouse, by and through their attorney, Kathleen M. Cawley, and hereby move this Honorable Court to dismiss the complaint pursuant to FED. R. CIV. P. 12(b)(6) for failure to state a claim upon which relief may be granted. In support of this motion Defendants state as follows:

1. Count One of the Complaint should be dismissed as the searches of Plaintiff were not in violation of any protected right. Bell v. Wolfish, 441 U.S. 520, (1979); Roberts v. Rhode Island, 239 F3d 107 (1st Cir. 2001).
2. Count Three of Complaint should be dismissed as Defendant Richard J. Rouse is entitled to qualified immunity. St. Hilaire v. City of Laconia, 71 F3d 20, (1st Cir. 1995) cert denied 518 U.S. 1017 (1996); Hunter v. Bryant, 502 U.S. 224 (1991).
3. Count Five of the Complaint as to Defendant Richard J. Rouse must be dismissed as the complaint does not allege any conduct by Rouse that would be considered threats, intimidation or coercion. Bally v. Northeastern University, 403 Mass. 713, 717, 532 N.E.2d 49, 51-52 (Mass. 1989).
4. Count Five of the Complaint as to Defendant Suffolk County must be dismissed as a municipality is not a "person" subject to suit under MASS. GEN. L. ch. 12 §11I. Chaabouni v. City of Boston, 133 F. Supp.2d 98, 103 (D. Mass.2001); Lebeau v. Town of Spencer, 167 F. Supp 2d. 449 (D. Mass. 2001).

In further support of their motion the Suffolk County Defendants submit the attached memorandum of law.

WHEREFORE, the Defendants Suffolk County and Richard J. Rouse, request this Honorable Court to dismiss the Complaint against them on all Counts pursuant to FED. R. CIV. P. 12(b)(6).

Respectfully submitted for,
Suffolk County and Sheriff Richard J.
Rouse,

by their attorney

Date: 1 / 07 / 02

Kathleen M. Cawley
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Certificate of Service

I, Kathleen M. Cawley, hereby certify that I have sent a copy of the above Memorandum in Support of County Defendant's Motion to Dismiss to Attorney Stephen Hrones, Hrones and Garrity, Bay 232 Lewis Wharf, Boston, MA 02110, by first class mail postage prepaid this 7th day of January 2002.

Kathleen M. Cawley
Kathleen M. Cawley

Certificate of Counsel Pursuant to Local Rule 7.1

Pursuant to L.R. 7.1(A)(2), I certify that I have conferred in good faith with counsel for the Plaintiff in an attempt to resolve the issue that is the subject of the accompanying motion.

Kathleen M. Cawley
Kathleen M. Cawley

Date: 1 / 07 / 02